

Amendment No. 3 to HB3861

Coleman
Signature of Sponsor

AMEND Senate Bill No. 3522*

House Bill No. 3861

by deleting Section 22 and Section 23 in their entirety, by substituting instead the following new sections and by redesignating existing sections accordingly:

SECTION 22. Tennessee Code Annotated, Section 35-3-113, is amended by deleting subsection (c) in its entirety.

SECTION 23. Tennessee Code Annotated, Section 45-2-1008, is amended by deleting from subsection (a) the language “, that the transferor and transferee banks are related institutions, as that term is defined in subsection (g), and”.

SECTION 24. The Tennessee Code Commission is requested to publish in the Tennessee Code Annotated the revisions to the official comments that are filed with the executive secretary of the Tennessee Code Commission within 30 days of July 1, 2010, by members of the Estate and Probate Section of the Tennessee Bar Association, the Probate Study Committee of the Tennessee Bar Association and the Trust Committee of the Tennessee Bankers Association.

AND FURTHER AMEND by deleting Section 6 in its entirety and by substituting instead the following:

SECTION 6. Tennessee Code Annotated, Section 35-15-505(a)(2), is amended by deleting the introductory phrase: “Except as provided in chapter 16 of this title regarding investment services trusts,” and replacing it with the introductory phrase: “Except as provided in chapter 16 of this title regarding investment services trusts and subdivision (a)(3) regarding an irrevocable special needs trust”.

Tennessee Code Annotated, Section 35-15-505(a), is further amended by renumbering subdivision (a)(3) as subdivision (a)(5), and adding new subdivisions (a)(3) and (a)(4) as follows:

(a)

(3) For the purposes of this section “irrevocable special needs trust” means an irrevocable trust established for the benefit of one or more disabled persons, which includes, but is not limited to, any individual who is disabled pursuant to 42 U.S.C. §1382c(a), as well as any individual who is disabled pursuant to any similar federal, state or other jurisdictional law or regulation, or has a condition that is substantially equivalent to one that qualifies them to be so disabled in accordance with any of the above even if not officially found to be so disabled by a governmental body if one of the purposes of the trust, expressed in the trust instrument or implied from the trust instrument, is to allow the disabled person to qualify or continue to qualify for public, charitable or private benefits that might otherwise be available to the disabled person. The existence of one or more nondisabled remainder beneficiaries of the trust shall not disqualify it as an irrevocable special needs trust for the purposes of this section.

(4) No creditor or assignee of the settlor of an irrevocable special needs trust, as defined in subdivision (a)(3), may reach or compel distributions from such special needs trust, to or for the benefit of the settlor of such special needs trust, or otherwise, regardless of whether or not such irrevocable special needs trust complies with the provisions of, and irrespective of the requirements of, chapter 16 of this title.

AND FURTHER AMEND by deleting from Section 8 subdivision (g)(6) in its entirety and by substituting instead the following:

(6) “Investment” shall mean any security as defined in §2(a)(1) of the Securities Act of 1933, any contract of sale of a commodity for future delivery within the meaning of §2(i) of the Commodity Exchange Act, or any other asset permitted for fiduciary accounts pursuant to the terms of chapter 14 of this title or by the terms of the governing

instrument, including by way of illustration and not limitation: shares or interests in a public or private investment fund, which shall include, but not be limited to, a public or private investment fund organized as a limited partnership, limited liability company, statutory or common law business trust, real estate investment trust, joint venture or other general or limited partnership; or an open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940.

AND FURTHER AMEND by deleting from Section 8 subsection (h) in its entirety and by substituting instead the following:

(h) A fiduciary seeking compensation pursuant to subsection (f) shall, as is applicable relative to the fiduciary's particular appointment, disclose either: to those persons entitled to be kept informed about the administration of a trust under § 35-15-813(a)(1), subject to the provisions of subsections (d) and (e) of § 35-15-813; to each principal in an agency relationship; or to all current recipients of statements of any other fiduciary account not described above; all fees or commissions paid or to be paid by the account, or received or to be received by an affiliate arising from such affiliated investment or delegation to an affiliate or associated agent. The disclosure required under this subsection may be given either in a copy of the prospectus or any other disclosure document prepared for the affiliated investment under federal or state securities laws or in a written summary that includes all fees or commissions received or to be received by the fiduciary or any affiliate of the fiduciary and an explanation of the manner in which such fees or commissions are calculated, either as a percentage of the assets invested or by some other method. Such disclosure shall be made at least annually unless there has been no increase in the rate at which such fees or commissions are calculated since the most recent disclosure. Notwithstanding this subsection (h), no such disclosure is required if the governing instrument or a court order expressly authorizes the fiduciary to invest the fiduciary account in affiliated investments or to perform the delegation to an affiliate or associated agent.